



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Final

MAR 01 1996

EPA Region 5 Records Ctr.



248026

REPLY TO THE ATTENTION OF:

S-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Richard L. Utt  
Director of Government Services  
Forest Preserve District of DuPage County  
185 Spring Avenue  
Glen Ellyn, Illinois 60137

Subject: Blackwell Landfill  
DuPage County, Illinois

Dear Mr. Utt:

Enclosed is the Forest Preserve District of DuPage County's copy of the Administrative Order by Consent issued for this site pursuant to Sections 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9606, 9607, and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Kurt Lindland, Assistant Regional Counsel, at (312)886-6831, or Duane Heaton, Remedial Project Manager, at (312)886-6399.

Sincerely yours,

William E. Muno  
Director, Superfund Division

Enclosure

cc: State Agency Superfund Coordinator

ORDINANCE NO. 96-062

ORDINANCE APPROVING ADMINISTRATIVE ORDER BY CONSENT FOR THE DISTRICT TO PROVIDE PERFORMANCE OF RESPONSE ACTIONS AND REIMBURSEMENT OF RESPONSE COSTS INCURRED BY THE UNITED STATES IN CONNECTION WITH THE DU PAGE COUNTY LANDFILL/BLACKWELL FOREST PRESERVE PROPERTY LOCATED WITHIN THE BLACKWELL FOREST PRESERVE, IN SECTION 26, TOWNSHIP 39 NORTH, RANGE 9 EAST, DU PAGE COUNTY, ILLINOIS (THE "BLACKWELL LANDFILL SITE" OR THE "SITE")

WHEREAS, the Forest Preserve District of DuPage County, Illinois (hereinafter the "District") is the owner of the Roy C. Blackwell Forest Preserve in Warrenville, Illinois; and

WHEREAS, from 1965 through 1973 the District as owner of and the Public Works Department of the County of DuPage as operator operated a municipal landfill on approximately 40 acres of land at the Roy C. Blackwell Forest Preserve; and

WHEREAS, a recreational hill was constructed through the use of sanitary landfill techniques know as Mt. Hoy, which hill was completed in 1973; and

WHEREAS, previously on July 6, 1989, the District by Resolution No. 89-234 authorized a good faith proposal to and negotiations with the USEPA with respect to an Administrative Order by Consent and to conduct a RI/FS at the Blackwell site; and

WHEREAS, the Forest Preserve District Landfill Committee has caused negotiations to be done between the District and the USEPA resulting in a new Administrative Order by Consent, which provides, among other things, that the Respondent is required to conduct response actions described herein to abate an imminent and substantial endangerment to the

public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site; and

**WHEREAS**, it is in the best interests of the District to approve the Administrative Order by Consent and authorize its execution on behalf of the District.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Commissioners of the Forest Preserve District of DuPage County, Illinois:

A. That the District hereby approves the Administrative Order by Consent for the Blackwell Forest Preserve, a copy of which is attached hereto and made a part hereof.

B. The Director of Government Services of the District is authorized to execute and transmit the signed Administrative Order by Consent to the USEPA, a copy of which is attached hereto, on behalf of the District.

C. The Secretary of the District is authorized and directed to transmit a copy of this Ordinance to the Executive Director, Secretary, Finance Officer, Attorney and three copies to the Director of Government Services of the Forest Preserve District of DuPage County, respectively.

**PASSED AND APPROVED** by the President and Board of Commissioners of the Forest Preserve District of DuPage County, Illinois this 20th day of February, 1996.

Ayes: 18  
Absent: 6  
Vacant: 1

**APPROVED:**

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. V-W- '96-C-341  
)  
DuPage County Landfill/ ) ADMINISTRATIVE ORDER BY  
Blackwell Forest Preserve ) CONSENT PURSUANT TO  
DuPage County, Illinois ) SECTION 106 OF THE  
EPA ID: ILD980606305 ) COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
Respondent: ) COMPENSATION, AND  
) LIABILITY ACT OF 1980,  
Forest Preserve District ) as amended, 42 U.S.C.  
of DuPage County ) § 9606(a)  
)

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order by Consent ("Consent Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA" or "Agency") and the Forest Preserve District of DuPage County (Respondent). The Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and further delegated to the Director, Superfund Division, Region 5.

This Consent Order provides for performance of response actions and reimbursement of response costs incurred by the United States in connection with the DuPage County Landfill/Blackwell Forest Preserve property located within the Blackwell Forest Preserve, in Section 26, Township 39 North, Range 9 East, DuPage County, Illinois (the "Blackwell Landfill Site" or the "Site"). This Consent Order requires the Respondent to conduct response actions

described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Consent Order will also be provided to the State of Illinois, which has been notified of the issuance of this Consent Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

The Respondent's participation in this Consent Order shall not constitute an admission of liability for property damage or potential property damage at the site or of U.S. EPA's findings or determinations contained in this Consent Order except in a proceeding to enforce the terms of this Consent Order. The Respondent agrees to comply with and be bound by the terms of this Consent Order. The Respondent further agrees that it will not contest the basis or validity of this Consent Order or its terms.

## **II. PARTIES BOUND**

This Consent Order applies to and is binding upon U.S. EPA, and upon the Respondent and the Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Consent Order.

The Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Consent Order, and comply with this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

### III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of the Consent Order, the Respondent stipulates that the factual statutory prerequisites under CERCLA necessary for issuance of this Consent Order only have been met. U.S. EPA's findings and this stipulation, for the purpose of this Order, are as follows:

1. The tract which was developed into the Blackwell Landfill consists of approximately 40 acres, and was purchased by the Forest Preserve District of DuPage County (FPD) in 1960.

2. Construction of the Blackwell Landfill was performed as a joint effort between the DuPage County Public Works Department (PWD) and the FPD. Under the terms of a July 1965 agreement, the PWD was to construct and operate the landfill under supervision by the FPD. In 1969, the FPD assumed responsibility for construction and operation of the landfill. The landfill was subsequently landscaped and used as a recreational amenity owned and operated by the FPD.

3. The Blackwell Landfill accepted approximately 1.5 million cubic yards of household refuse and light industrial waste from about 1965 through 1973. Some refuse may have been incorporated into the cover material.

4. Specific wastes known to be disposed of at the Blackwell Landfill Site include eight thousand tons of dry sludge from the Metropolitan Sanitary District of Greater Chicago, daily trash from the glass manufacturing facility of Owens-Illinois of St. Charles, Illinois, and disposal of plant trash from Kroehler Manufacturing of Naperville, Illinois. An estimated three to four tons of refuse per day were placed in the landfill.

5. The Blackwell Landfill was originally designed to consist of a series of approximately 1-acre clay-lined cells with a leachate collection system. Over time, modifications were made to the original design, including the addition of at least one cell used for disposal of construction debris, lack of the leachate collection system, and cells larger than 1 acre. Detailed as-built drawings are not known to exist for the site to document construction.

6. The "cap" material ranges in thickness from approximately 2 feet to 60 feet, but in addition to clay, it includes topsoil, silt fill, sand and gravel fill, gravel fill, and possibly some refuse.

7. The Blackwell Landfill Site was proposed for inclusion on the National Priorities List (NPL) in June 1988 pursuant to Section 105 of CERCLA, and was placed on the NPL in February 1990.

8. On September 25, 1989, U.S. EPA and the FPD entered into an Administrative Order by Consent, whereby the FPD agreed to conduct a Remedial Investigation (RI) and Feasibility Study (FS) for the Blackwell Landfill Site.

9. The RI was approved by U.S. EPA in December 1994. The FS was submitted to U.S. EPA in June 1995.

10. In 1982, gas vents were installed in the landfill to reduce natural gas buildup.

11. A network of groundwater monitoring wells was installed in and around the landfill in the early 1970's. During the 1980's, additional monitoring wells were added to provide pertinent information on both the glacial outwash aquifer and the bedrock aquifer.

12. The monitoring wells were sampled quarterly from 1983-1989,

and sampled again during the RI in 1990 and 1991 and in June 1995. Sampling results have shown that the concentration of eleven volatile organic compounds (VOCs) in monitoring wells downgradient of the Blackwell Landfill Site, but still on the forest preserve property, exceed Maximum Contaminant Levels (MCLs) allowed in public drinking water. Two wells near the boundary of the forest preserve property had sampling results that reached or exceeded a MCL during one sampling event; however, the detections were not repeated in the June 1995 sampling.

13. Monitoring wells downgradient of the Blackwell Landfill have shown the presence of the following hazardous substances migrating from the landfill: trichloroethene, tetrachloroethene, 1,2-dichloroethene, 1,1-dichloroethane, 1,2-dichloroethane, 1,2-dichloropropane, vinyl chloride, benzene, toluene, ethylbenzene, xylene, chlorobenzene, chloroethane, acetone, 2-butanone, 4-methyl-2-pentanone, bis(2-ethylhexyl)phthalate, and carbon disulfide.

14. A glacial outwash aquifer begins beneath the Blackwell Landfill Site.

15. The direction of groundwater flow in the glacial outwash aquifer is west to southwest from the landfill. Groundwater flow from Spring Brook is east toward the landfill. Between the landfill and Spring Brook, groundwater flow in the outwash aquifer is to the south.

16. Spring Brook, located approximately 1,000 feet downgradient of the landfill, is the boundary of the Blackwell Forest Preserve, with the exception of one area where there are two residences.

17. The horizontal hydraulic gradient is flattened in the outwash aquifer between the landfill and Spring Brook, strengthening the vertical gradient between the outwash aquifer and the bedrock



aquifer.

18. An aquitard between the glacial outwash aquifer and the underlying Silurian dolomite bedrock is very thin or locally absent in areas downgradient of the landfill.

19. Several contaminants which are present in the landfill leachate were detected at levels below MCLs in 15 of 51 private wells in the residential area downgradient of the Site.

20. The private wells which had detectable contaminant levels draw groundwater from the bedrock aquifer.

21. The direction of groundwater flow in the bedrock aquifer is toward the southwest.

22. Spring Brook is not a hydrological barrier to groundwater flow.

23. The three contaminants found in the private wells were among the five contaminants found in the bedrock monitoring wells downgradient of the Blackwell Landfill Site.

24. The Silurian dolomite bedrock aquifer is a major source of drinking water in the area surrounding the Blackwell Landfill Site.

25. The Blackwell Landfill Site is within the recharge zone of the Warrenville public water supply.

26. Sand Pond, located just south of the landfill, was closed to public swimming by the FPD in 1984 as a precautionary measure. Low levels of contaminants were found in the pond sediments during the RI in 1989. There is no plan by the FPD to re-open Sand Pond for swimming.

27. Leachate seeps were mitigated by the FPD in 1980 by regrading and redirecting runoff and by utilizing erosion control measures. The FPD has been pumping leachate from collection manholes and trucking it to the Wheaton wastewater treatment plant for treatment and disposal.

28. The volume of leachate within the landfill is estimated to be 53-70 million gallons, and the rate of leachate generated is estimated to average 9,500-14,000 gallons per day.

29. One leachate sample collected from the landfill during the RI contained trichloroethene (TCE) at a level exceeding the value for the Toxicity Characteristic Leaching Procedure (TCLP) as established pursuant to the Resource Conservation and Recovery Act (RCRA). Also, because dilutions were necessary during lab analysis, the Contract Required Detection Limit for several organic compounds exceeded the RCRA TCLP regulatory limits. Thus, other compounds could have also exceeded the RCRA TCLP regulatory limit.

30. Vinyl chloride, which is a degradation product of TCE and some of the other VOCs associated with the Blackwell Landfill Site, has a MCL that is lower than the MCL of the parent compounds.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these response actions, U.S. EPA has determined that:

1. The Blackwell Landfill Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Trichloroethene, tetrachloroethene, 1,2-dichloroethene, 1,1-dichloroethane, 1,2-dichloroethane, 1,1,1-dichloroethane, 1,2-

dichloropropane, vinyl chloride, benzene, toluene, ethylbenzene, xylene, chlorobenzene, chloroethane, acetone, 2-butanone, 4-methyl-2-pentanone, bis(2-ethylhexyl)phthalate, and carbon disulfide are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Respondent FPD is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent FPD is the present "owner" and "operator" of the Blackwell Landfill Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent FPD is either a person who at the time of disposal of any hazardous substances owned or operated the Blackwell Landfill Site, or who arranged for disposal or transport for disposal of hazardous substances at the Blackwell Landfill Site. The Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of hazardous substances within the landfill, the landfill leachate, and the groundwater.

b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of hazardous substances in groundwater monitoring wells downgradient from the Blackwell Landfill Site in excess of MCLs, and detectable levels of hazardous substances in private residential wells downgradient from the Blackwell Landfill Site. Additionally, groundwater is a source of public drinking water in the area around the Blackwell Landfill.

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of hazardous substances in the waste and leachate within the landfill which could be further mobilized by percolation of rainwater and/or snowmelt through the landfill. Additionally, erosion of the landfill surface could increase percolation through the landfill, thus further mobilizing contaminants in the landfill.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The response actions required by this Consent Order, if properly performed, are consistent with the NCP, 40 CFR Part 300, as amended, and with CERCLA, and are reasonable and necessary to protect the public health, welfare, and the environment.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for the Blackwell

Landfill Site, it is hereby ordered and agreed that the Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Consent Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and Remedial Project Manager

The Respondent shall perform the actions required by this Consent Order itself or retain a contractor to undertake and complete the requirements of this Consent Order. The Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 20 business days of the effective date of this Consent Order. The Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Consent Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, the Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval, and shall notify U.S. EPA of that contractor's name and qualifications within 5 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Consent Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by this Consent Order. The Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that

person's name and qualifications within 5 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Consent Order shall constitute receipt by the Respondent.

The U.S. EPA has designated Duane Heaton of the Remedial Response Section #4, Region 5, as its Remedial Project Manager (RPM). The Respondent shall direct all submissions required by this Consent Order to the RPM at 77 West Jackson Boulevard, SR-6J, Chicago, Illinois 60604-3590, by certified or express mail. The Respondent shall also send a copy of all submissions to Kurt Lindland, Assistant Regional Counsel, 77 West Jackson Boulevard, C-29A, Chicago, Illinois 60604-3590. Respondent is encouraged to make submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

U.S. EPA and the Respondent shall have the right, subject to the immediately preceding paragraphs, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondent, and the Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within two business days of oral notification.

## 2. Work to Be Performed

The Respondent shall perform, at a minimum, the following response actions which are specified in the Statement of Work ("SOW"), attached hereto as Appendix A:

- a. conduct soil borings to delineate any areas of the landfill which do not have a minimum of two feet of low permeability cover material;

- b. based on the findings of soil borings, repair the cap as necessary to ensure that all areas of the landfill are covered with a minimum of two feet of low permeability material.
- c. ensure that all areas of the landfill are sloped sufficiently to enhance drainage from the surface of the landfill;
- d. install leachate extraction wells to adequately remove leachate from the interior of the landfill to reduce leachate being released into the underlying groundwater to an acceptable level, and to vent landfill gas;
- e. install a collection system to convey the extracted leachate to a central collection tank for storage pending treatment and disposal;
- f. treat and dispose of the stored leachate at a NPDES- or RCRA-permitted facility, as appropriate;
- g. continue to maintain and utilize the 25 existing gas vents to reduce pressure buildup within the landfill, thus further reducing the volume of leachate being released into the underlying groundwater;
- h. make inoperable an existing subsurface leachate drain into an adjacent area of the forest preserve, and connect the existing leachate collection systems to the leachate collection and disposal system being installed pursuant to this Consent Order;
- i. provide as-built plans of storm water drainage from the top of the landfill, and make any necessary modifications to ensure that contaminants from within the landfill are not inadvertently being drained from the landfill to nearby areas

of the forest preserve;

j. provide evidence that trees on the landfill are not in an area where root penetration could allow percolation of rainwater through refuse within the landfill;

k. reassess the adequacy of the number and integrity of existing monitoring wells to ensure that contaminants in the groundwater will be detected in all aquifers in downgradient areas between the landfill and the forest preserve boundary;

l. conduct quarterly monitoring of the monitoring wells on the forest preserve property to ensure that contaminant levels do not increase to a level that could jeopardize either human health or the environment. Monitoring shall begin upon approval by U.S. EPA of the Design Work Plan and continue until a Record of Decision is issued by U.S. EPA and a Consent Decree or Unilateral Administrative Order is in effect to address long-term maintenance and monitoring.

m. maintain all components to ensure the continued operation of the systems to prevent contamination of groundwater from exceeding Maximum Contaminant Levels at the forest preserve boundary;

3. Design.

a. Within 45 days after U.S. EPA's approval of the Contractor and Project Coordinator pursuant to Section V.1., the Respondent shall submit to U.S. EPA and the IEPA a work plan for the design of the response actions at the Site ("Design Work Plan"). The Design Work Plan shall provide for design of the response actions set forth in Section V.2. and the SOW for achievement of the Performance Standards and other requirements set forth in this Consent Order and/or the SOW.



Upon its approval by U.S. EPA, the Design Work Plan shall be incorporated into and become enforceable under this Consent Order. Within 30 days after U.S. EPA's approval of the Design Work Plan, the Respondent shall submit to U.S. EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and U.S. EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Design Work Plan shall include plans and schedules for implementation of all pre-design and design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of (1) design sampling and analysis plan (including, but not limited to, a Design Quality Assurance Plan (DQAPP) in accordance with Section V.8. (Quality Assurance and Sampling); (2) all pre-design field work; (3) a Preliminary Design submittal; (4) a Pre-final/Final Design submittal; (5) a Construction Quality Assurance Plan.

c. Upon approval of the Design Work Plan by U.S. EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to U.S. EPA and the State, the Respondent shall implement the Design Work Plan. The Respondent shall submit to U.S. EPA and the State all plans, submittals and other deliverables required under the approved Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section VI (U.S. EPA Approval of Plans and Other Submissions). Unless otherwise directed by U.S. EPA, the Respondent shall not commence further design activities at the Site prior to approval of the Design Work Plan.

d. The Preliminary Design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of

additional field sampling and pre-design work; (3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and (6) preliminary construction schedule.

e. The Intermediate Design submittal, if required by U.S. EPA or if independently submitted by the Respondent, shall be a continuation and expansion of the Preliminary Design. Any value engineering proposals must be identified and evaluated during this review.

f. The Pre-final/Final Design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (5) Health and Safety Plan for response action field activities which conforms to the applicable Occupational Safety and Health Administration and U.S. EPA requirements including, but not limited to, 29 CFR 1910.120; and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Project Coordinator, to conduct a quality assurance program during the construction phase of the project. The Pre-final/Final Design shall also include the following: (1) the schedule for completion of the response actions; (2) method for selection of the contractor; (3) methodology for implementation for the CQAPP; (4) a groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) construction quality control plan (by constructor); (9) procedures and plans for the decontamination of equipment and the disposal of

contaminated materials; and (10) a schedule for implementation of all response action tasks.

4. The Respondent shall continue to implement the response actions and O&M set forth above until U.S. EPA issues a Record of Decision and entry of a Consent Decree or Unilateral Administrative Order for implementation of the response actions set forth above and in the SOW, and any other response actions U.S. EPA determines are necessary to respond to the release or threat of release of hazardous substances from the Site.

5. Modification of the SOW or Related Work Plans.

a. If U.S. EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the response actions, U.S. EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with Section V.2. of this Consent Order.

b. If the Respondent objects to any modification determined by U.S. EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section VIII (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. The Respondent shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit

U.S. EPA's authority to require performance of further response actions as otherwise provided in Section V.10. of this Consent Order.

6. The Respondent acknowledges and agrees that nothing in this Consent Order, the SOW, or the Design Work Plan constitutes a warranty or representation of any kind by the U.S. EPA that compliance with the work requirements set forth in the SOW or the Design Work Plan will achieve the Performance Standards.

7. The Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the U.S. EPA RPM of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Respondent shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Respondent following the award of the contract for construction of the response actions. The Respondent shall provide the information required by Section

V.7.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

8. Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Consent Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. The Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, the Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. The Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondent shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, the Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent or its contractors or agents while performing work under this Consent Order. The Respondent shall notify U.S. EPA not less than 5 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

9. Reporting

The Respondent shall submit a monthly written progress report to

U.S. EPA concerning actions undertaken pursuant to this Consent Order, beginning 30 calendar days after the effective date of this Consent Order, until termination of this Consent Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Consent Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.11 (Access to Property and Information).

#### 10. Additional Work

In the event that the U.S. EPA or the Respondent determine that additional work, including design, sampling, or response actions, is necessary to accomplish the Performance Standards, notification of such additional work shall be provided to the other parties in writing. Any additional work which Respondent determines to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work. Respondent shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondent has proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this Paragraph.

# 11. Access to Property and Information

The Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Consent Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Consent Order, provided however, that Respondent does not waive the protection of attorney client privilege or the attorney work product. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which the Respondent has access in order to conduct actions which U.S. EPA determines to be necessary. The Respondent shall submit to U.S. EPA, upon request/receipt, the results of all sampling or tests and all other data generated by the Respondent or its contractors, or on the Respondent's behalf during implementation of this Consent Order.

Where work/action under this Consent Order is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Consent Order, or as otherwise specified in writing by the RPM. The Respondent shall notify U.S. EPA within 2 business days if, after using its best efforts, it is unable to obtain such agreements. The Respondent shall describe in writing its efforts to obtain access. U.S. EPA may, in its discretion, then assist the Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. The Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

## 12. Record Retention, Documentation, Availability of Information

The Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Consent Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the response actions required by this Consent Order. At the end of this six year period and at least 60 calendar days before any document or information is destroyed, the Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, the Respondent shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA.

If the Respondent asserts a privilege in lieu of providing documents, it shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.

## 13. Compliance With Other Laws

The Respondent shall perform all activities required pursuant to this Consent Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined



that the activities contemplated by this Consent Order are consistent with the National Contingency Plan ("NCP").

Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities requires a federal or state permit or approval, the Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

This Consent Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### 14. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Consent Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the RPM or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If the Respondent fails to respond, U.S. EPA may respond to the release or endangerment and reserves the right to recover costs associated with that response.

The Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to

prevent the reoccurrence of such a release. The Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

#### VI. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

1. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, U.S. EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondent modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing the Respondent at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to implementation of the response actions set forth under Section V.2 (Work to be Performed) or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

2. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Section VI.1.(a), (b), or (c), the Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by U.S. EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section IX (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the

deficiencies pursuant to Section VI.1.(c) and the submission has a material defect, U.S. EPA retains its right to seek penalties, as provided in Section XI (Stipulated and Statutory Penalties).

3. a. Upon receipt of a notice of disapproval pursuant to Section VI.1.(d), the Respondent shall, within 30 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any penalties applicable to the submission, as provided in Section XI, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Sections VI.4. and VI.5.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Section VI.1.(d), the Respondent shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XI (Stipulated and Statutory Penalties).

4. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by U.S. EPA, U.S. EPA may again require the Respondent to correct the deficiencies, in accordance with Sections VI.1., VI.2., or VI.3. U.S. EPA also retains the right to modify or develop the plan, report or other item. The Respondent shall implement any such plan, report, or item as modified or developed by U.S. EPA, subject only to its right to invoke the procedures set forth in Section IX (Dispute Resolution).

5. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, the Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Respondent invokes the dispute

resolution procedures set forth in Section IX (Dispute Resolution) and U.S. EPA's action is overturned pursuant to that Section. The provisions of Section IX (Dispute Resolution) and Section XI (Stipulated and Statutory Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XI.

6. All plans, reports, and other items required to be submitted to U.S. EPA under this Consent Order shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Order. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item required to be submitted to U.S. EPA under this Consent Order, the approved or modified portion shall be enforceable under this Consent Order.

#### **VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER**

The RPM shall be responsible for overseeing the implementation of this Consent Order. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any activities required by this Consent Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the Site. Absence of the RPM from the Blackwell Landfill Site shall not be cause for stoppage of work unless specifically directed by the RPM.

#### **VIII. REIMBURSEMENT OF COSTS**

The Respondent shall pay all oversight costs of the United States related to the Blackwell Landfill Site that are not inconsistent

with the NCP. In addition, U.S. EPA will send the Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Order.

The Respondent shall, within 30 calendar days of receipt of a bill, remit a Forest Preserve District check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

The Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - DuPage County Landfill/Blackwell Forest Preserve Site" and shall reference the payor's name and address, the EPA site identification number (ILD980606305), and the docket number of this Consent Order.

In the event that any payment is not made within the deadlines described above, the Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Respondent's failure to make timely payments under this Section.

The Respondent may dispute all or part of a bill for Oversight costs submitted under this Consent Order, if the Respondent alleges that U.S. EPA has made an accounting error, or if the Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, the Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, the Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. The Respondent shall simultaneously transmit a copy of both checks to the RPM. The Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### **IX. DISPUTE RESOLUTION**

The parties to this Consent Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Consent Order.

If the Respondent objects to any U.S. EPA action taken pursuant to this Consent Order, including billings for response costs, the Respondent shall notify U.S. EPA in writing of its objection within 10 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting the Respondent's position, and all supporting documentation on which the Respondent's rely (hereinafter the "Statement of Position").

U.S. EPA and the Respondent shall within 15 calendar days of U.S. EPA's receipt of the Respondent's Statement of Position, attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Consent Order. If the parties are unable to reach an agreement within the Negotiation Period, U.S. EPA will issue a written decision on the dispute to the Respondent. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the U.S. EPA decision regarding the dispute.

The Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

#### X. FORCE MAJEURE

The Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by the Respondent, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

The Respondent shall notify U.S. EPA orally within 24 hours after the Respondent becomes aware of any event that the Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event or Respondent becomes aware of any events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. The Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny the Respondent an extension of time for performance/waive any claim of force majeure by the Respondent. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a force majeure,



the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter the Respondent's obligation to perform or complete other tasks required by this Consent Order which are not directly affected by the force majeure.

#### XI. STIPULATED AND STATUTORY PENALTIES

For each calendar day, or portion thereof, that the Respondent fails to fully perform any requirement of this Consent Order in accordance with the schedule established pursuant to this Consent Order, the Respondent shall be liable as follows:

a. The following stipulated penalties shall be payable per violation per day to the U.S. EPA for any noncompliance identified in Section XI.a.1:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	Days 1-30
\$500	Days 30-60
\$750	Over 60 days

1. Failure to submit the following plans or reports, subject to Section V.3 (Design) and the SOW:

- a. Draft Design Work Plan
- b. Final Design Work Plan
- c. Preliminary (30%) Design Document
- d. Prefinal (95%)/Final (100%) Design Documents
- e. Prefinal Inspection Report
- f. Final Inspection Report
- g. Completion of Work Report
- h. Identification of Design or Response Action contractor
- i. Failure to obtain access agreements without using best efforts.
- j. Failure to comply with any schedule in the approved Design Work Plan or approved Final Design Document

b. The following stipulated penalties shall be payable per violation per day to the U.S. EPA for any noncompliance identified in Subparagraph b.1:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	Days 1-30
\$400	Days 30-60
\$600	Over 60 days

1. Violations or compliance milestones

- a. Deed Restrictions recording and conveyance
- b. Exceedance of air discharge limits
- c. Failure to comply with notice or other requirements of the Consent Order
- d. Failure to take action to abate an endangerment pursuant to Section V.14 of this Consent Order
- e. Failure to implement additional response actions pursuant to Section V.10 of this Consent Order
- f. Failure to obtain U.S. EPA approval before commencing any response action activity.

c. The following stipulated penalties shall be payable per violation per day for failure to submit progress reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	Days 1-30
\$200	Days 30-60
\$300	Over 60 days

Upon receipt of written demand by U.S. EPA, the Respondent shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VIII (Reimbursement of

Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified the Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way the Respondent's obligations to complete the performance of the work required under this Consent Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If the Respondent prevails upon resolution, the Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of the Consent Order. Violation of any provision of this Consent Order may subject the Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). The Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the U.S. EPA as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should the Respondent violate this Consent Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Consent Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## XII. RESERVATION OF RIGHTS

Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Consent Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

Notwithstanding any other provision of this Consent Order, U.S. EPA expressly reserves, and this Consent Order is without prejudice to, U.S. EPA's rights to seek past costs incurred in responding to the release or threat of release of hazardous substances at or from the Site, including, without limitation, all such costs incurred by U.S. EPA up to and until the date this Consent Order is signed by the Respondent. U.S. EPA also expressly reserves, and this Consent Order is without prejudice to, U.S. EPA's rights to seek future costs, including oversight costs, incurred in response to the release or threat of release of hazardous substances and incurred after the date this Consent Order is signed by the Respondent pursuant to Section VIII (Reimbursement of Costs) of this Consent Order.

## XIII. OTHER CLAIMS

By issuance of this Consent Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property

resulting from any acts or omissions of the Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order.

Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Consent Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Consent Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

- This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Consent Order.

No action or decision by U.S. EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### **XIV. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Consent Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue the Respondent for judicial imposition of damages or civil penalties or to take administrative action against the Respondent for any

failure to perform response actions agreed to in this Consent Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Consent Order, in consideration and upon the Respondent's payment of the response costs specified in Section VIII of this Consent Order, U.S. EPA covenants not to sue or to take administrative action against the Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of oversight costs incurred by the United States in connection with this Consent Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by the Respondent of its obligations under this Consent Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

#### XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against the Respondent for matters addressed in this Consent Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Consent Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Consent Order for indemnification, contribution, or cost recovery.

**XVI. INDEMNIFICATION**

The Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of the Respondent and the Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Consent Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Consent Order, however, requires indemnification by the Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondent).

**XVII. MODIFICATIONS**

Except as otherwise specified in Section V.5., if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Consent Order may be modified in writing by mutual agreement of the parties. Any modification to this Consent Order shall be incorporated into and made an enforceable part of this Consent Order.

If the Respondent seeks permission to deviate from any approved

plan or schedule, the Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified.

#### **XVIII. NOTICE OF COMPLETION**

Within 30 calendar days after the Respondent concludes that all work has been fully performed, the Respondent shall submit to U.S. EPA a written Completion Report, signed by a professional engineer, certifying that the work has been completed in full satisfaction of this Consent Order. U.S. EPA shall require such additional activities as may be necessary to complete the work or U.S. EPA may, based upon present knowledge and Respondent's certification to U.S. EPA, issue written notification to Respondent that the work has been completed, except for certain continuing obligations required by this Consent Order (e.g., record retention, payment of costs). If U.S. EPA determines that any activities have not been completed in accordance with this Consent Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that the Respondent correct such deficiencies. The Respondent shall implement the necessary activities and shall submit a modified Completion Report in accordance with the U.S. EPA notice. Failure to implement the necessary activities shall be a violation of this Consent Order.



**XIX. SUBMITTALS/CORRESPONDENCE**

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Consent Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Respondent shall be addressed to:

Mr. Joseph Benedict  
Compliance Officer  
Forest Preserve District of DuPage County  
P.O. Box 2339  
185 Spring Avenue  
Glen Ellyn, Illinois 60138

With copies to:

Mr. Peter Vagt  
Montgomery Watson  
2100 Corporate Drive  
Addison, Illinois 60101

Submissions to U.S. EPA shall be addressed to:

Duane Heaton  
Remedial Project Manager  
U.S. EPA - Region 5  
77 West Jackson Boulevard, SR-6J  
Chicago, Illinois 60604-3590

With copies to:

Kurt Lindland  
Assistant Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard, C-29A  
Chicago, Illinois 60604-3590

Rick Lanham  
Project Manager  
NPL Unit  
Remedial Project Management Section  
Division of Remediation Management  
Bureau of Land  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62794-9276

**XX. SEVERABILITY**

If a court issues an order that invalidates any provision of this Consent Order or finds that the Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, the Respondent shall remain bound to comply with all provisions of this Consent Order not invalidated by the court's order.

**XXI. EFFECTIVE DATE**

This Consent Order shall be effective upon receipt by the Respondent of a copy of this Consent Order signed by the Director, Superfund Division, U.S. EPA Region 5.

## APPENDIX A

### STATEMENT OF WORK FOR THE DESIGN AND IMPLEMENTATION OF RESPONSE ACTIONS AT THE DUPAGE COUNTY LANDFILL/BLACKWELL FOREST PRESERVE SITE DUPAGE COUNTY, ILLINOIS

#### I. PURPOSE

The purpose of this Statement of Work (SOW) is to set forth requirements for implementation of the response actions set forth in this SOW, the approved Design Work Plan, the approved Final Design, and any additional guidance provided by U.S. EPA in submitting deliverables for designing and implementing the response actions at the DuPage County Landfill/Blackwell Forest Preserve Site (Blackwell Landfill or Site).

#### II. DESCRIPTION OF THE RESPONSE ACTIONS/PERFORMANCE STANDARDS

Respondent Forest Preserve District of DuPage County (FPD) shall design and implement the response actions to meet the performance standards and specifications set forth in this SOW. Performance standards shall include cleanup standards, standards of control, quality criteria and other substantive requirements, criteria or limitations set forth in this SOW and/or Administrative Order on Consent (Consent Order).

##### 1. Site Security

During construction, the FPD shall install and maintain barriers around all areas of the Site which could leave landfill refuse, landfill leachate, contaminated soils, or contaminated groundwater exposed, or which could present physical hazards to prevent access and/or vandalism to the Site. Barriers shall be sufficient to prevent access to the construction area without willful disregard of safety by trespassers. Warning signs shall be posted at 200-foot intervals along the barriers and at all gates or entryways. The warning signs shall advise that the area is hazardous due to chemicals in the soils and liquids including groundwater, which pose a risk to public health through direct contact with soils and contaminated liquids. The signs shall also provide a telephone number to call for further information. Fencing of each area shall be completed prior to initiation of any construction activities within each respective area of the Site.

The FPD shall inspect all barriers on a regular basis. Incidents of vandalism, trespassing, and breaches of the barriers or disappearance of warning signs shall be recorded by the FPD and reported to U.S. EPA as soon as possible. The FPD shall repair any damage or deterioration, or perform any other maintenance within five (5) business days of the FPD becoming aware that repair or

maintenance is necessary.

Upon completion of construction activities within each fenced area, and upon written approval from U.S. EPA, the FPD may remove barrier material from each specific enclosed area of the Site.

2. Restrictive Covenants/Deed Restrictions

Within 30 days after submittal of the 30% Design (at which time the landfill will have been delineated and surveyed), the FPD shall execute and record with the DuPage County Recorder the restrictive covenants in Appendix B of this Consent Order. Within 20 days, the FPD shall provide notice to U.S. EPA that such restrictive covenants have been executed and recorded.

3. Construction, Installation, and Operation of a Containment System for Response Actions

All construction activities shall be performed in accordance with the general industry standards at 29 CFR 1910 and 1926. Threshold limit values shall be monitored in the breathing zone during construction and monitoring activities.

A. Landfill Cover

The FPD shall delineate the landfill boundary. The locations of soil borings and/or the method to be followed in determining the sequential placement of soil borings to be used to delineate the landfill boundary shall be specified in the Design Work Plan.

The FPD shall conduct soil borings of sufficient number and appropriate locations to satisfactorily determine areas of the landfill cover which do not have a minimum of two feet of low permeability material.

The FPD shall conduct soil borings in areas where there are trees near the edge of the landfill to determine whether there is buried refuse beneath the area of the root zones of the trees and if there is, to determine the characteristics and total thickness of the cover between the ground surface and the refuse. With U.S. EPA concurrence, the FPD will develop a rationale for acceptable cover thickness in combination with specific tree types, and a tree management program that will allow the maintenance of trees on the landfill in safe areas, without threatening the integrity of the cover over refuse.

The FPD shall design and construct any necessary repairs to the landfill cover to ensure that all areas of the landfill have a low permeability layer with a minimum thickness of two feet, and that there are no areas where perched surface water infiltration seeps from the sideslopes of the landfill. The

repaired and existing cap shall extend to the edge of the landfill and be sloped where necessary to promote surface water drainage off the landfill. The borrow source for the impermeable layer is subject to U.S. EPA approval. Upon completion, the FPD shall vegetate the landfill. The FPD shall conduct groundwater and leachate monitoring and routine maintenance of the cover as part of the requirements to be established in the Operation and Maintenance (O & M) Plan.

Municipal refuse unearthed during cap repair may be consolidated under the landfill cap. If, during construction, a condition arises indicating that hazardous substances may have been unearthed, the material shall be analyzed using the Toxicity Characteristic Leaching Procedure (TCLP), and if the material is hazardous, all hazardous substances shall be removed off-site in accordance with Section V.7. of the Consent Order.

During construction, the National Ambient Air Quality Standards (NAAQS) are standards that are to be considered. Particulate matter standard specified at 40 CFR Part 50 is 150 ug/m<sup>3</sup>, 24-hour average concentration, and 50 ug/m<sup>3</sup>, annual arithmetic mean. The procedures to determine compliance with the standard set forth at 40 CFR Part 50, Appendix K, shall be followed.

#### B. Leachate Collection

The FPD shall install a leachate collection system such that leachate shall be pumped from the landfill, piped to a central storage area on the Site, and periodically trucked to a facility holding a National Pollutant Discharge Elimination System (NPDES) Permit pursuant to 40 CFR Parts 122 and 126 for treatment and disposal. The FPD shall analyze the leachate in accordance with the monitoring schedule in the approved Operation and Maintenance Plan to ensure that pretreatment pursuant to 40 CFR Part 403 is not required prior to transporting the leachate to a NPDES-permitted facility. If analysis indicates that pretreatment is necessary, the FPD shall propose to U.S. EPA for approval an alternate method of treating and disposing of leachate.

The FPD shall conduct TCLP analysis and, as appropriate, properly contain and dispose of any sediments which accumulate in the leachate storage vessel at a properly-permitted disposal facility.

#### C. Landfill Gas Venting

The FPD shall design the leachate extraction system such that the leachate extraction wells installed as part of these response actions will also be utilized as a passive landfill

gas venting system. The 25 existing gas vents shall be maintained as part of the gas venting system.

Because the Blackwell Landfill is in a severe ozone nonattainment area, VOC emissions shall not exceed 25 tons per year. If VOC emissions exceed this level, the major source requirement under Section 182(d) of the Clean Air Act applies. State of Illinois requirements at 35 IAC 218 shall also be met.

The National Ambient Air Quality Standards (NAAQS) are to be complied with for Particulate Matter (40 CFR Part 50), which has a standard of 150 ug/m<sup>3</sup>, 24-hour average concentration, and 50 ug/m<sup>3</sup>, annual arithmetic mean. The procedures to determine compliance with the standard are in 40 CFR Part 50, Appendix K.

4. Installation and Operation of Monitoring Program for Response Actions

The FPD shall implement monitoring programs to evaluate and ensure that the construction and implementation of the response actions complies with approved plans and design documents and performance standards. The FPD shall submit monitoring programs as part of the Design Work Plan, which shall address the specific components of the response actions listed below. Each sample shall be analyzed for a list of parameters approved by U.S. EPA during design.

A. Groundwater Monitoring

The FPD shall implement a groundwater monitoring program as identified in the Design Work Plan or as required by U.S. EPA. The FPD shall design a groundwater monitoring program to detect changes in the chemical concentration of the groundwater in both the glacial outwash aquifer and in the underlying bedrock aquifer in downgradient areas between the landfill and the Forest Preserve boundary.

Upon written approval by U.S. EPA of the Design Work Plan, the FPD shall assess the integrity of the monitoring wells. Following written approval of the Design Work Plan, and until the Record of Decision and Consent Decree or Unilateral Administrative Order are in place establishing a long-term monitoring program, the FPD shall, at a minimum, sample and analyze groundwater at the locations identified in the Design Work Plan for all volatile organic compounds on the Target Compound List (TCL) on a quarterly basis, and all semivolatile organic compounds on the TCL and the full Target Analyte List (TAL) on an annual basis, and any other sampling parameters designated in the Design Work Plan to ensure that there is no exceedance of any Maximum Contaminant Level (MCL) designated at 40 CFR Part 141 for any contaminant in either the glacial

outwash aquifer or the underlying bedrock aquifer at the point of compliance described in Section II.4.F. of this SOW. Field parameters to be measured and recorded for each monitoring well are groundwater elevation, pH, temperature, turbidity, specific conductance, redox potential, and dissolved oxygen.

After construction of the response actions, the FPD shall continue sampling and analysis of groundwater between the landfill and the FPD boundary until a Record of Decision is issued by U.S. EPA and a Consent Decree or Unilateral Administrative Order is in effect to address long-term groundwater monitoring requirements at the locations identified in the Design Work Plan and analyzed for all TCL, TAL, and any other sampling parameters designated in the Design Work Plan, to ensure that there is no exceedance of any MCL for any contaminant in either the glacial outwash aquifer or the underlying bedrock aquifer at the point of compliance described in Section II.4.F. of this SOW. Field parameters to be measured and recorded for each monitoring well are groundwater elevation, pH, temperature, turbidity, and specific conductivity.

Compliance with the State of Illinois' Groundwater Quality Standards at 35 IAC 620 is required, and such compliance shall be addressed in the Design Work Plan.

If quarterly groundwater monitoring over a minimum period 8 quarters indicates that contaminant concentrations throughout the system of groundwater monitoring wells are not increasing, the FPD may petition U.S. EPA to allow monitoring on a less frequent basis. Such a petition must be approved in writing by U.S. EPA before the FPD can reduce the monitoring frequency.

If additional information indicates that the groundwater monitoring program is inadequate, U.S. EPA may require additional groundwater monitoring wells and field or laboratory analysis of additional parameters.

#### B. Air

At all times during the performance of the response actions that result in disturbance of the landfill cover, the FPD will conduct air monitoring as part of the approved Health and Safety Plan for the response actions. The objective of the monitoring will be to ensure the health and safety of the workers and general public. In addition, the air emissions shall not exceed any requirements specified in Section II.3.C. of this SOW. If air emissions exceed these levels, the FPD shall take corrective measures as developed in the Final Contingency Plan submitted as part of the Prefinal/Final Design.

### C. Soils

During earthmoving as part of the cap repair, and during any other part of the response actions, unearthed material should be visually monitored on a continuous basis to ascertain, based on best professional judgement, whether hazardous substances may have been unearthed. If it is suspected that hazardous substances may have been unearthed, actions shall be taken in accordance with Section II.3.A. of this SOW.

### D. Extraction System Monitoring

The FPD shall initiate a monitoring program for the extraction system as identified in the approved Design Work Plan or as required by U.S. EPA. The monitoring program shall be designed to detect any conditions that may interfere with the proper operation and function of the system. System monitoring shall include periodic collection and field/laboratory analysis of leachate/residue samples in accordance with the monitoring schedule in the approved Operation and Maintenance Plan to determine the need for pretreatment prior to trucking of the leachate to a NPDES-permitted facility or disposal of any residues. Sampling shall occur at a frequency and duration established in the approved Final Design. Once the components of the response actions are determined to be both operational and functional, the FPD shall follow the sampling procedures and frequencies established in the O&M Plan.

### F. Points of Compliance

In order to monitor and evaluate the effectiveness of the response actions throughout the Site, certain locations at which there are groundwater monitoring wells shall be selected as points of compliance. Additional wells may be included during the development of the Design Work Plan and the Operation and Maintenance (O&M) Plan. The location, screened interval, and other pertinent details for any additional wells to be installed pursuant to the Consent Order or this SOW shall be approved in writing by the U.S. EPA. A major consideration for determining the need for additional monitoring wells will be ensuring adequate monitoring of both the glacial outwash aquifer and the underlying bedrock aquifer in the areas between the landfill and the Forest Preserve's downgradient boundary. Wells designated as representing the Points of Compliance shall be designated in the Design Work Plan. All of these wells shall be considered as groundwater points of compliance.

The wells are grouped into wells for detection monitoring and wells for compliance monitoring, as defined below. If any of the wells are destroyed or in any way becomes unusable, the



FPD shall repair or replace each unusable well. Detection monitoring shall be conducted at wells between the landfill and the Forest Preserve's downgradient boundary. The purpose of detection monitoring shall be to ensure that contaminant levels are not increasing; the reduction of contaminant loading, in combination with natural attenuation and dilution, should allow the standards of 35 IAC 620.410 to be achieved over time. Compliance monitoring shall be conducted at the Forest Preserve's downgradient boundary. The purpose of compliance monitoring shall be to ensure that concentrations of groundwater contaminants do not exceed any MCL, an excess cancer risk greater than  $10^{-6}$ , or a Hazard Index greater than or equal to 1.0, whichever is more stringent, at the Forest Preserve's downgradient (western) boundary. The frequency of sampling shall be quarterly and the parameters sampled for during detection and compliance monitoring are specified in Section II.4.A. of this SOW.

Points of Compliance for the monitoring and evaluation of the landfill gas venting shall be addressed in the Design Work Plan and the O & M Plan, but shall not exceed a cumulative cancer risk of  $1.0 \times 10^{-6}$  or a Hazard Index greater than or equal to 1.0 to site visitors or off-site residents. The Baseline Risk Assessment conducted as part of the RI has shown that in the current condition, the cumulative cancer risk does not exceed  $1.0 \times 10^{-6}$  nor does the Hazard Index equal or exceed 1.0 for site visitors or off-site residents.

### III. SCOPE OF DESIGN AND IMPLEMENTATION OF RESPONSE ACTIONS

The design/response actions shall consist of five tasks. All plans are subject to EPA approval.

#### Task 1: Design Work Plan.

#### Task 2: Design Phases

- A. Preliminary Design
- B. Prefinal Design/ Final Design

#### Task 3: Response Actions/Construction

- A. Preconstruction Meeting
- B. Prefinal Inspection
- C. Final Inspection
- D. Reports
  - 1. Completion of Work Report

#### Task 4: Operation and Maintenance

#### Task 5: Performance Monitoring

### Task 1: Design Work Plan

The FPD shall submit a Work Plan which shall document the overall management strategy for performing pre-design investigations, design, construction, operation, maintenance and monitoring of response actions for U.S. EPA review and approval. The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation and shall include a description of qualifications of key personnel directing the pre-design investigations and the design, including contractor personnel. The Work Plan shall also contain a schedule for the pre-design investigations and design activities.

The pre-design investigations shall include soil boring activities to delineate the landfill boundary, to delineate the areas of the landfill that do not meet the State of Illinois requirements at 35 IAC Part 807, to determine whether there is refuse in areas where trees currently grow near the edge of the landfill, and to gather any other information the FPD determines to be necessary for design purposes. A health and safety plan shall be submitted for the pre-design investigations. The results of the pre-design investigations will be submitted as part of the Preliminary (30%) Design.

The FPD shall submit a Design Work Plan in accordance with Section V.3 of the Consent Order and Section V of this SOW.

### Task 2: Design Phases

The FPD shall prepare construction plans and specifications to implement the response actions at the Site as described in this SOW. Plans and specifications shall be submitted in accordance with the schedule set forth in Section V below. Subject to approval by U.S. EPA, the FPD may submit more than one set of design submittals reflecting different components of the response actions. All plans and specifications shall demonstrate that the response actions shall meet all objectives of Consent Order and this SOW, including all Performance Standards. The FPD shall meet regularly with U.S. EPA to discuss design issues.

#### A. Preliminary Design

The FPD shall submit the Preliminary Design when the design effort is approximately 30 % complete. The Preliminary Design submittal shall include or discuss, at a minimum, the following:

- Preliminary plans, drawings, and sketches, including design calculations;

- Results of pre-design investigations and any additional field sampling, unless submitted previously as a separate report;
- Design assumptions and parameters;
- Proposed cleanup verification methods;
- Draft Performance Standard Verification Plan;
- Outline of required specifications;
- Proposed siting/locations of processes/construction activity;
- Expected long-term monitoring and operation requirements;
- Real estate, easement, and permit requirements;
- Preliminary construction schedule, including contracting strategy.

#### C. Prefinal and Final Designs

The FPD shall submit the Prefinal Design when the design effort is 95% complete and shall submit the Final Design when the design effort is 100% complete. The Prefinal Design shall fully address all comments made to the preceding design submittal. The Final Design shall fully address all comments made to the Prefinal Design and shall include reproducible drawings and specifications suitable for bid advertisement. The Prefinal Design shall serve as the Final Design if U.S. EPA has no further comments and issues the notice to proceed.

The Prefinal and Final Design submittals shall include those elements listed for the Preliminary Design, as well as, the following:

- Final Performance Standard Verification Plan;
- Final Construction Quality Assurance Plan;
- Final QAPP/Final H. & S Plan/Final FSP/Final Contingency Plan;
- Draft Operation and Maintenance Plan;
- Capital and Operation and Maintenance Cost Estimate. This cost estimate shall refine the FS cost estimate to reflect the detail presented in the Final Design;
- Final Project Schedule for the construction and

implementation of the response actions which identify timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones.

### Task 3: Response Actions/Construction

The FPD shall implement the response actions as detailed in the approved Final Design. The following activities shall be completed in constructing the response actions.

#### A. Preconstruction inspection and meeting:

The FPD shall participate with the U.S. EPA and the State in a preconstruction inspection and meeting to:

- a. Review methods for documenting and reporting inspection data;
- b. Review methods for distributing and storing documents and reports;
- c. Review work area security and safety protocol;
- d. Discuss any appropriate modifications of the construction quality assurance plan to ensure that site-specific considerations are addressed; and,
- e. Conduct a Site walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a person designated by the FPD and minutes shall be transmitted to all parties.

#### B. Prefinal inspection:

Within 10 business days after the FPD makes a preliminary determination that construction is complete, the FPD shall notify the U.S. EPA and the State for the purposes of conducting a prefinal inspection. The prefinal inspection shall consist of a walk-through inspection of the entire Facility. The prefinal inspection is to determine whether the project is complete and consistent with the contract documents and the response actions. Any outstanding construction items discovered during the inspection shall be identified and noted. Additionally, treatment equipment shall be operationally tested by the FPD. The FPD shall certify that the equipment has performed to meet the purpose and intent of the specifications. Retesting shall be completed where

deficiencies are revealed.. The prefinal inspection report shall outline the outstanding construction items, actions required to resolve items, completion date for these items, and a proposed date for final inspection.

C. Final inspection:

Within 10 business days after completion of any work identified in the prefinal inspection report, the FPD shall notify the U.S. EPA and the State for the purposes of conducting a final inspection. The final inspection shall consist of a walk-through inspection of the Facility. The prefinal inspection report shall be used as a checklist with the final inspection focusing on the outstanding construction items identified in the prefinal inspection. Confirmation shall be made that outstanding items have been resolved.

D. Reports

1. Completion of Work Report

Within 45 days of a successful final inspection, the FPD shall submit a Completion of Work Report. In the report, a registered professional engineer and the FPD's Project Coordinator shall state that the response actions have been completed in satisfaction of the requirements of this Consent Order. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the FPD or the FPD's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Task 4: Operation and Maintenance

The FPD shall prepare an Operation and Maintenance (O&M) Plan to cover both implementation and maintenance of the response actions until a Record of Decision is issued by U.S. EPA and a Consent Decree or Unilateral Administrative Order is in effect to address long-term maintenance and monitoring. An initial Draft O&M Plan shall be submitted as a Final Design document submission. The final O&M Plan shall be submitted to U.S. EPA prior to the pre-final construction inspection, in accordance with the approved construction schedule. The plan shall be composed of the following elements:

1. Description of normal operation and maintenance ;
  - a. Description of tasks for operation;
  - b. Description of tasks for maintenance;
  - c. Description of prescribed treatment or operation conditions; and
  - d. Schedule showing frequency of each O&M task.
2. Description of potential operating problems;
  - a. Description and analysis of potential operation problems;
  - b. Sources of information regarding problems; and
  - c. Common and/or anticipated remedies.
3. Description of routine monitoring and laboratory testing;
  - a. Description of monitoring tasks;
  - b. Description of required data collection, laboratory tests and their interpretation;
  - c. Required quality assurance, and quality control ;
  - d. Schedule of monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of or discontinue monitoring; and
  - e. Description of verification sampling procedures if Cleanup or Performance Standards are exceeded in routine monitoring.
4. Description of alternate O&M;
  - a. Should systems fail, alternate procedures to prevent release or threatened releases of hazardous substances, pollutants or contaminants which may endanger public health and the environment or exceed performance standards; and
  - b. Analysis of vulnerability and additional resource requirement should a failure occur.
5. Corrective Action;
  - a. Description of corrective action to be implemented in the event that cleanup or performance standards are exceeded; and
  - b. Schedule for implementing these corrective actions.
6. Safety plan;
  - a. Description of precautions, of necessary equipment, etc., for Site personnel; and
  - b. Safety tasks required in event of systems failure.

7. Description of equipment; and
  - a. Equipment identification;
  - b. Installation of monitoring components;
  - c. Maintenance of Site equipment; and
  - d. Replacement schedule for equipment and installed components.
8. Records and reporting mechanisms required.
  - a. Daily operating logs;
  - b. Laboratory records;
  - c. Records for operating costs;
  - d. Mechanism for reporting emergencies;
  - e. Personnel and maintenance records; and
  - f. Monthly/annual reports to State agencies.

#### Task 5: Performance Monitoring

Performance monitoring shall be conducted to ensure that all Performance Standards are met.

##### A. Performance Standard Verification Plan

The purpose of the Performance Standard Verification Plan is to provide a mechanism to ensure that Performance Standards for the response actions are met. The Draft Performance Standards Verification Plan shall be submitted with the Preliminary Design. The Final Performance Standards Verification Plan, which is part of the Prefinal/Final Design, shall be implemented on the approved schedule. The Performance Standards Verification Plan shall include:

1. Quality Assurance Project Plan
2. Health and Safety Plan
3. Field Sampling Plan

#### IV. CONTENT OF SUPPORTING PLANS

The documents listed in this section -- the Quality Assurance Project Plan, the Field Sampling Plan, the Health and Safety Plan, the Contingency Plan and the Construction Quality Assurance Plan -- are documents which must be prepared and submitted as outlined in Section III of this SOW. The following section describes the required contents of each of these supporting plans.

##### 1. Quality Assurance Project Plan

The FPD shall develop a Site specific Quality Assurance Project Plan (QAPP), covering sample analysis and data handling for samples collected in all phases of future Site work, based upon the Consent Order and guidance provided by U.S. EPA. The QAPP shall be

consistent with the requirements of the EPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The QAPP shall at a minimum include:

Project Description

- \* Facility Location History
- \* Past Data Collection Activity
- \* Project Scope
- \* Sample Network Design
- \* Parameters to be Tested and Frequency
- \* Project Schedule

Project Organization and Responsibility

Quality Assurance Objective for Measurement Data

- \* Level of Quality Control Effort
- \* Accuracy, Precision and Sensitivity of Analysis
- \* Completeness, Representativeness and Comparability

Sampling Procedures

Sample Custody

- \* Field Specific Custody Procedures
- \* Laboratory Chain of Custody Procedures

Calibration Procedures and Frequency

- \* Field Instruments/Equipment
- \* Laboratory Instruments

Analytical Procedures

- \* Non-Contract Laboratory Program Analytical Methods
- \* Field Screening and Analytical Protocol
- \* Laboratory Procedures

Internal Quality Control Checks

- \* Field Measurements
- \* Laboratory Analysis

Data Reduction, Validation, and Reporting

- \* Data Reduction
- \* Data Validation
- \* Data Reporting

Performance and System Audits

- \* Internal Audits of Field Activity
- \* Internal Laboratory Audit
- \* External Field Audit
- \* External Laboratory Audit



#### Preventive Maintenance

- \* Routine Preventative Maintenance Procedures and Schedules
- \* Field Instruments/Equipment
- \* Laboratory Instruments

#### Specific Routine Procedures to Assess Data Precision, Accuracy, and Completeness

- \* Field Measurement Data
- \* Laboratory Data

#### Corrective Action

- \* Sample Collection/Field Measurement
- \* Laboratory Analysis

#### Quality Assurance Reports to Management

The FPD shall attend a pre-QAPP meeting with U.S. EPA. The FPD shall submit a draft QAPP to U.S. EPA for review and approval as part of the Design Work Plan.

## 2. Health and Safety Plan

The FPD shall develop a health and safety plan which is designed to protect on-site personnel and area residents and Forest Preserve visitors from physical, chemical and all other hazards posed by these response actions. The safety plan shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 CFR 1910 and 1926. The safety plan shall develop the performance levels and criteria necessary to address the following areas:

- Facility Description
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring
- Personal protective equipment
- Personal hygiene
- Decontamination - personal and equipment
- Site work zones
- Contaminant control
- Contingency and emergency planning
- Logs, reports and record keeping

As part of the health and safety plan, the FPD shall submit a Contingency Plan describing procedures to be used in the event of an accident or emergency at the site. The draft Contingency Plan shall be submitted with the Prefinal Design and the Final Contingency Plan shall be submitted with the Final Design. The Contingency Plan shall include, at a minimum, the following:

- A. Name of the person or entity responsible for responding in the event of an emergency incident.
- B. Plan and date(s) for meeting(s) with the local community, including local, State and Federal agencies involved in the cleanup, as well as local emergency squads and hospitals.
- C. First aid medical information.
- D. Air Monitoring Plan.

### 3. Field Sampling Plan

The FPD shall develop a field sampling plan (as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October 1988). The Field Sampling Plan should supplement the QAPP and address all sample collection activities.

### 4. Construction Quality Assurance Plan

The FPD shall submit a Construction Quality Assurance Plan (CQAP) which describes the Site specific components of the quality assurance program which shall ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The draft CQAP shall be submitted with the Prefinal Design and the final CQAP shall be submitted with the final design. The CQAP shall contain, at a minimum, the following elements:

- A. Responsibilities and authorities of all organizations and key personnel involved in the design and construction of the response actions.
- B. Qualifications of the Quality Assurance Official to demonstrate he possesses the training and experience necessary to fulfill his identified responsibilities.
- C. Protocols for sampling and testing used to monitor construction.
- D. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation. A description of the provisions for final storage of all records consistent with the requirements of the Consent Order shall be included.
- E. Reporting requirements for CQA activities shall be described in detail in the CQA plan. This shall include

such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQA plan.

V. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

A summary of the project schedule and reporting requirements contained in this SOW is presented below:

<u>Submission</u>	<u>Due Date</u>
1. Design Work Plan	Forty-five (45) days after U.S. EPA's approval the FPD's contractor and Project Coordinator
2. Preliminary Design (30%)	In accordance with schedule in the approved Design Work Plan
3. Prefinal Design (95%)	In accordance with schedule in the approved Design Work Plan
4. Final Design (100%)	Thirty (30) days after receipt of U.S. EPA's comments on the Prefinal Design
5. Award Contract(s) for the Response Actions	As established in the schedule in the approved Final Design
6. Pre-Construction Inspection and Meeting	Fifteen (15) days after Award of Contract(s) for the Response Actions
7. Initiate Construction of Response Actions	Fifteen (15) days after Pre-Construction Inspection and Meeting
8. Completion of Construction	In accordance with the construction schedule in the approved Final Design
9. Prefinal Inspection	No later than fifteen (15) days after completion of construction

SubmissionDue Date

- |                                |   |
|--------------------------------|---|
| 10. Prefinal Inspection Report | Fifteen (15) days after completion of prefinal inspection                           |
| 11. Final Inspection           | Fifteen (15) days after completion of work identified in prefinal inspection report |
| 12. Final O&M Plan             | No later than Prefinal Inspection   |
| 13. Completion of Work Report  | Sixty (60) days after final inspection  |

## APPENDIX B

### DECLARATION OF DEED RESTRICTIONS AND RESTRICTIVE COVENANTS UPON REAL ESTATE

The Forest Preserve District of DuPage County, owner of the real estate described below, hereby impose restrictions on that portion of the described real estate which is known as the DuPage County Landfill/Blackwell Forest Preserve, (hereinafter "the Site") within the Blackwell Forest Preserve, in Section 26, Township 39 North, Range 9 East, DuPage County, Illinois:

The following restrictions are imposed upon the Site, its present and any future owner (including heirs to the above described real estate), their authorized agents, assigns, employees, or persons acting under their direction or control, for the purposes of protecting public health or welfare or the environment, preventing interference with the performance, and maintenance, of any response actions selected and/or undertaken by the United States Environmental Protection Agency ("U.S. EPA"), or any party acting as agent for the U.S. EPA, pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Specifically, the following deed restrictions shall apply to the Site:

1. There shall be no use of, or activity at, the Site that may interfere with, damage, or otherwise impair the effectiveness of any response action (or component thereof) selected and/or undertaken by U.S. EPA, or any party acting as agent for U.S. EPA, pursuant to Section 104 of CERCLA, except with written approval of U.S. EPA, and consistent with all statutory and regulatory requirements;
2. There shall be no consumptive, extractive, or other use of the groundwater underlying the Site that could cause exposure of humans or animals to the groundwater underlying the Site. In addition, there shall be no installation of drinking water production wells on the Site, except as approved in writing by U.S. EPA;;
3. There shall be no residential, commercial, or agricultural use of the landfill, including, but not limited to, any on-site excavation, landfilling, mining, invasive construction, and drilling, except as approved in writing by U.S. EPA;
4. There shall be no tampering with, or removal of, the containment or monitoring systems that remain on the Site as a result of implementation of any response action by U.S. EPA, or any party acting as agent for U.S. EPA, and which is selected and/or undertaken by U.S. EPA pursuant to Section 104 of CERCLA;

5. There shall be no activities that cause destruction of vegetation on the landfill or otherwise could result in degradation of the remedial components; and
6. There shall be no ignition sources on the landfill except as approved, in writing by U.S. EPA.

The obligation to implement and maintain the above restrictions shall run with that portion of the land that is described as the Site and shall remain in effect until such time as U.S. EPA provides to the landowner a written certification stating the above restrictions are no longer necessary.

IN WITNESS WHEREOF, has caused these Deed Restrictions to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

Respondent Landowner: \_\_\_\_\_

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF ILLINOIS     )  
                              )  
COUNTY OF DUPAGE    )

ss:

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, personally appeared \_\_\_\_\_, and acknowledged this instrument.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_